

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

R.M.S. TITANIC, INC.,  
SUCCESSOR IN INTEREST TO  
TITANIC VENTURES, LIMITED  
PARTNERSHIP,

Plaintiff,

v.

THE WRECKED AND ABANDONED  
VESSEL, ETC.,

Defendant.

CIVIL ACTION NO.  
2:93cv902

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

September 18, 2018

BEFORE: THE HONORABLE REBECCA BEACH SMITH  
Chief United States District Judge

APPEARANCES:

KALEO LEGAL  
By: Brian A. Wainger  
And  
McGUIRE WOODS LLP  
By: Robert W. McFarland  
Counsel for R.M.S. Titanic

1 APPEARANCES CONTINUED:

2  
3 UNITED STATES ATTORNEY'S OFFICE

4 By: Kent Porter

5 Assistant United States Attorney

6 Counsel for Amicus United States

7 THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

8 By: Jackie Roller

9 And

10 DEPARTMENT OF JUSTICE

11 By: Matt Troy

12 Counsel for NOAA

13 VANDEVENTER BLACK LLP

14 By: Edward J. Powers

15 Counsel for potential intervenors

16 ALSO PRESENT:

17 Neil Quartaro

18 Jim McClammy

19 Harris Winsberg

20 Tane Casserly

21 David W. Alberg

1 (Hearing commenced at 1:00 p.m.)

2 THE CLERK: In case 2:93cv902, R.M.S. Titanic,  
3 Inc., et cetera, versus The Wrecked and Abandoned Vessel, et  
4 cetera.

5 Mr. McFarland, Mr. Wainger, is the plaintiff ready  
6 to proceed?

7 MR. McFARLAND: Good afternoon, Your Honor.  
8 Plaintiff R.M.S. Titanic, Inc., is ready.

9 THE COURT: Good afternoon.

10 THE CLERK: Mr. Porter, is the government ready to  
11 proceed?

12 MR. PORTER: Good afternoon, Your Honor. We are  
13 ready.

14 THE COURT: Good afternoon. Counsel, we are here  
15 today on the continued reporting and status of the ongoing  
16 proceedings in the bankruptcy court in Florida and also on  
17 the status reports that you've filed since the last hearing.  
18 I believe NOAA has filed a status report and R.M.S. Titanic  
19 has filed a periodic report.

20 I believe that your report may have come first,  
21 Mr. Porter, so we will go forward with you and your report  
22 on behalf of the United States.

23 MR. PORTER: Thank you, Your Honor. As we noted in  
24 the last report, a couple of things have happened: One,  
25 there has been a delegation from the Secretary of Commerce

1 to the NOAA administrator for making decisions under Section  
2 111. We attached that delegation to our status report.  
3 There is nothing further to report on that particular  
4 aspect.

5 THE COURT: Is it under 111 or 113?

6 MR. PORTER: I'm sorry, 113, yes, Section 113.

7 THE COURT: Let me just ask you a question, though,  
8 while we are on this. It's interesting law, and I know that  
9 R.M.S. Titanic has raised some questions about it. Under  
10 admiralty law and admiralty jurisdiction, the federal courts  
11 are entrusted with certain jurisdiction. I won't try to  
12 review all of that now, but, obviously, part of that  
13 jurisdiction is governing salvage operations. This Court  
14 obtained jurisdiction over the salvage operation of the  
15 Titanic 20, 30 years ago.

16 MR. PORTER: Correct.

17 THE COURT: So, consequently, how can NOAA or any  
18 government regulatory agency come in at this point in time  
19 and say that anybody that wishes to conduct any research,  
20 salvage, other activity, or physically go to the wreck site,  
21 is subject to the Secretary of Commerce and the bureaucratic  
22 powers that be, the executive branch, when the Courts have  
23 traditionally had admiralty jurisdiction? This Court has  
24 jurisdiction over the salvage rights, so does this law  
25 contravene the Article III powers? It's giving Article III

1 powers to an executive agency, so I don't know that that's  
2 appropriate.

3 MR. PORTER: We don't believe that they are  
4 incompatible, Your Honor. I think, as we have said in prior  
5 submissions to the Court, it's always going to be the  
6 intention of NOAA to advise anybody who is seeking an  
7 application, of the Court's authority and the Court's  
8 jurisdiction. As I move into the EYOS situation in a  
9 moment, I will be able to show you how that that is exactly  
10 the case.

11 There are, quite frankly, consistent and  
12 overlapping interests of both the Court and NOAA to protect  
13 the Titanic wreck site forever from unwarranted intrusions.  
14 Some of this, obviously, as you know, goes back to the  
15 international agreement, which has not been fully  
16 implemented yet. Still waiting for the U.S. to decide that  
17 it will be a proper signatory to that, but also the NOAA  
18 guidelines, the 1986 Memorial Act, all those things are all  
19 consistent, we believe, with what the Court's objective is,  
20 and while I know that R.M.S.T. has expressed concern that it  
21 interferes with the jurisdiction, we see it more as being  
22 consistent with and compatible with the Court's jurisdiction  
23 to protect the wreck site.

24 THE COURT: All right. That, obviously, is not an  
25 issue before the Court at this juncture.

1 MR. PORTER: Correct.

2 THE COURT: The main concern of the Court is the  
3 sale of the artifacts and the already salvaged items.  
4 That's what the Court is looking at primarily now under this  
5 Asset Purchase Agreement and the proceedings in the  
6 bankruptcy court.

7 Part of the value, I would think, of R.M.S.T. is  
8 its salvage rights, in other words, that it is still the  
9 salvor-in-possession. Whether or not someone will  
10 ultimately contest that for some reason, because they  
11 haven't properly exercised those rights, I'm not getting  
12 into today. At this juncture the Court has jurisdiction  
13 over the salvage of the Titanic, as far as it's concerned,  
14 and R.M.S.T. remains the salvor-in-possession.

15 I do agree with you, Mr. Porter, that I think  
16 ultimately the interest of the United States to keep  
17 everything together and to protect the wreck site are not  
18 inconsistent with the intent of the Court. We may be  
19 looking at inconsistent ways to go about that protection,  
20 one from an Article III jurisdictional standpoint and  
21 another from a legislative standpoint, but we can go through  
22 that another day.

23 At this juncture I believe that our ultimate goal  
24 is consistent, but there could be an issue at some point  
25 about the continued salvage of the wreck and whether it can

1 be controlled or overseen by the Court and/or the Secretary  
2 of Commerce as opposed to the Court. I just see that as a  
3 potential issue in the case.

4 MR. PORTER: I understand Your Honor's concern. I  
5 suppose it's potential, but we really do view our role as  
6 being compatible with the Court's interest, as well.

7 THE COURT: Up to this point the Court has viewed  
8 it, likewise. As I've said on a number of occasions, I  
9 believe the Court is the entity that brought the United  
10 States into this case.

11 MR. PORTER: That's correct.

12 THE COURT: Because it was the Court. The Court's  
13 role should not be to try the case. The Court was  
14 continually the only one in here that was asking questions  
15 and overseeing anything that was going on. So,  
16 consequently, we are here now, and we can debate the  
17 constitutional issues at a later time.

18 MR. PORTER: Right. Moving on to the other issue  
19 we raised in the status report regarding the EYOS expedition  
20 for a little later this month, and EYOS, actually, I've  
21 recently learned, stands for Expedition Yacht Operations and  
22 Services. So at least we have now a name to go with the  
23 acronym.

24 As of late last night or yesterday evening, NOAA  
25 did authorize a permit for them to conduct the expedition

1 consistent with the letter that Mr. McCallum provided to the  
2 Court. As you will recall, and I think we reported earlier  
3 in the status report, their objective was to go to the wreck  
4 site. They would drop some ballast. They would use a man  
5 submersible and do standard definition images, photography,  
6 but that's all that their plan was at that time. I do have  
7 a copy of that authorization I'd like to tend to the Court  
8 as an exhibit today.

9 THE COURT: All right. I'll mark that as Amicus  
10 United States Exhibit No. 1 for this hearing.

11 (The document was received in evidence as Amicus  
12 U.S. Exhibit No. 1.)

13 MR. PORTER: Your Honor, it's rather lengthy.  
14 There are just a couple of highlights I'd make. I'd draw  
15 the Court's attention to the first page of the  
16 authorization, the second page of this document, Paragraph 1  
17 under "authorized activity" or under "authorized activities"  
18 describes the specific things that are authorized by EYOS to  
19 conduct at the site.

20 THE COURT: Let me just ask you a couple of  
21 questions, and then you can go through some details.

22 MR. PORTER: Sure.

23 THE COURT: At one point there was an individual  
24 who was interested, I think it was Ms. Johnston, was it?

25 MR. PORTER: There is a Lori Johnston who was



1 involved with EYOS, yes.

2 THE COURT: There was something about they are  
3 recovering a small tray with metal and wood samples that had  
4 been placed at the site in 2004, to bring that up and to  
5 study it for scientific purposes. I think she was studying  
6 bio-deterioration.

7 MR. PORTER: That's correct.

8 THE COURT: She wanted to place a new tray.

9 MR. PORTER: That's correct.

10 THE COURT: In other words, I'm summarizing it, but  
11 that was, in effect, the tray had been placed by, is it  
12 Dr. Johnston or Ms. Johnston?

13 MR. PORTER: I believe it's Ms. Johnston.

14 THE COURT: Johnston.

15 MS. ROLLERI: Johnston.

16 MR. PORTER: Dr. Cullimore.

17 THE COURT: It was Dr. Cullimore, but there is also  
18 a Johnston, and it is a Dr. Lori Johnston. Is she still  
19 planning to retrieve her tray and place another one?

20 MR. PORTER: I was actually going to get to that  
21 next, Your Honor, but, yes, she is involved in this  
22 expedition, and that is the plan.

23 THE COURT: Then the other thing, they were going  
24 to collect rusticles?

25 MR. PORTER: Yes.

1 THE COURT: The Court has orders regarding rusticle  
2 samples, so you need to go through that with the Court, too.

3 MR. PORTER: Right.

4 THE COURT: It looks like I disturbed you. Go back  
5 to what you were doing.

6 MR. PORTER: I'll go wherever you'd like me to go,  
7 Your Honor, except out to the wreck site.

8 THE COURT: Go back. I think I interrupted you, so  
9 go back to where you were.

10 MR. PORTER: Just a few points on this  
11 authorization letter. On the third page of the  
12 authorization under "special terms," just pointing out No.  
13 2, specifically directs that there is no contact, no  
14 excursion within the interior, and nothing can be left.  
15 This is the status of this right now. We will get to this  
16 next issue on the tray momentarily.

17 Then on the next page, in Paragraph 9, it refers to  
18 NOAA reserves the right to have an observer on board. To  
19 let the Court know, NOAA will have an observer on board.  
20 That individual is here. His name is Tane Casserly. He is  
21 seated next to Mr. Alberg. He is a marine archaeologist,  
22 and so he will be on board during this exhibition as an  
23 observer for NOAA.

24 Then the last point is simply what I alluded to  
25 earlier, Paragraph 10, which refers to the continuing

1 authority of this Court over the wreck site. That takes  
2 care of that authorization, Your Honor.

3 Turning to the trays, if I may, I'd like to provide  
4 you another exhibit which is actually photographs of the  
5 trays.

6 THE COURT: We will mark that exhibit as Amicus  
7 United States No. 2.

8 (The photographs received in evidence as Amicus U.S.  
9 Exhibit No. 2.)

10 MR. PORTER: So you have two pages here. The  
11 second page is actually the tray that is at the wreck site  
12 now. This is the tray that was placed in 2004. It was  
13 placed on the bow of the Titanic.

14 Based on information they have, it is no longer on  
15 the bow. Some other visit out there, it was removed, and  
16 they believe it to be on the seabed near the bow. So it is  
17 not on the bow now.

18 THE COURT: Was it removed naturally by the  
19 currents?

20 MR. PORTER: No. I understand it was removed by  
21 another site visit to it. There are, what I understand is  
22 various memorials and other people are going out to this  
23 site, whether we would like that or not, but they do.  
24 Occasionally, they have left memorials of some sort, and  
25 another expedition removed all those from the bow, including

1 this tray.

2 This tray is, I'm told, is approximately -- it's  
3 difficult to tell -- this is actually a picture of it on the  
4 bow -- is approximately 12 by 18 inches in size and about 12  
5 inches tall.

6 The picture on the front is the tray that they  
7 would propose to place. Again, the picture is deceiving  
8 because this one actually looks smaller. It is 12 by 12 by  
9 12. It's easier to see in this picture the various pieces  
10 of metal that are out there and the various pieces of  
11 materials that are out there for them to study, study the  
12 deterioration of the wreck. What they would like to do is  
13 place this one back on the bow.

14 This is an ongoing conversation with NOAA. There  
15 has not been a final determination yet. Quite frankly, we  
16 wanted to bring this to the Court's attention to discuss  
17 with the Court to see if the Court had any concerns of it  
18 impacting its jurisdiction by what they would like to do.

19 I will tell you that NOAA is strongly in favor of  
20 this, this research, because it allows them to determine  
21 what are steps to be done to preserve the wreck site, to  
22 determine how this vessel is deteriorating.

23 Talking to Mr. Alberg this morning, he said he  
24 spoke with a member of the park service that oversees the  
25 *USS Arizona*. They would love to have this kind of data, as

1 well, so that they can evaluate how best to preserve that  
2 particular site.

3           So that's what they want to do on the trays. They  
4 believe the tray is near the bow. They would like to  
5 recover the tray that's there now, and they would like to  
6 place this tray on the bow because they believe that's the  
7 best location for it to sort of mimic the deterioration  
8 that's happening to the ship itself, as opposed to on the  
9 seabed because additional biodeterioration, or whatever, can  
10 affect it on the seabed. So on the bow itself.

11           THE COURT: How would they do that? With the arm  
12 of the submersible?

13           MR. PORTER: The submersible has an arm, and they  
14 would drop it, I would imagine, very similar to what this  
15 picture shows on the first one. It appears that it's being  
16 lowered onto the deck. That's one of the areas of research  
17 that they are very much interested in pursuing, NOAA is very  
18 much interested in pursuing, quite frankly, believes that  
19 this is the type of thing that 113, the guidelines, the  
20 Memorial Act, all of this was designed to aid in the  
21 research of this type of activity on the seabed.

22           The other thing that they would like to do involves  
23 collecting some rusticle samples. As Your Honor had pointed  
24 out initially in 2000, the Court had issued an order barring  
25 any kind of activity that impacted the ship itself, and then

1 later, and I believe it was R.M.S.T. that wanted to collect  
2 rusticles that Ms. Johnston was involved with. But the  
3 Court issued an amendment to that order to allow the  
4 rusticles to be taken for those kind of testing and samples.

5 That's what they would like to do again. The way  
6 they would do it is, again, using the arm of the  
7 submersible, the arm would hold a small can or vessel of  
8 some sort that would be placed underneath the rusticle, and  
9 because these are very fragile, and I understand that the  
10 rusticle itself, especially out the end, is almost like ash.  
11 It's not like an icicle. It's very fragile, that just by  
12 touching the canister to it, a part of the rusticle will  
13 fall into the canister.

14 That is how they would propose to gather 100 to 300  
15 grams of rusticles for analysis. There would be no scraping  
16 of the vessel. There would be no impact to the vessel  
17 itself. It would simply be by using this robot can and  
18 hitting the rusticle and allowing it to fall into the  
19 canister.

20 Again, both of these, well, all three if you count  
21 picking up the tray and placing the new one, are all  
22 activities that NOAA strongly encourages and is strongly  
23 interested in to gain this sort of research, gain this sort  
24 of information to allow it to understand what impacts are  
25 happening at the wreck site.

1           So we would certainly ask the Court's blessing to  
2 allow this. Again, NOAA hadn't made a final determination,  
3 but we would certainly ask the Court's blessing to allow  
4 NOAA to consider authorizing a permit for this activity, as  
5 well.

6           I believe that's all I had in the status report,  
7 Your Honor. I reported on the bankruptcy, but I think  
8 that's fairly well-known now what the status of the  
9 bankruptcy is. Mr. McFarland has filed a periodic report  
10 with the schedules on that.

11           THE COURT: The first tray was placed during the  
12 2004 expedition?

13           MR. PORTER: That's correct. The idea is they  
14 looked for about a 10-year time frame. They haven't,  
15 obviously, gotten back to get that one yet, but that's the  
16 idea; let them sit for about 10 years, and then retrieve  
17 them.

18           THE COURT: Let me hear from Mr. McFarland, and  
19 then I'll get back with you on the trays and the rusticles.

20           MR. MCFARLAND: Good afternoon, Your Honor. Robert  
21 McFarland on behalf of plaintiff, R.M.S. Titanic. With me  
22 at counsel table, Brian Wainger and Jessica Sanders, the  
23 corporate secretary. Would the Court like me to address at  
24 this point Mr. Porter's report because we have grave  
25 concerns over what we just heard.

1 THE COURT: All right. Well, why don't you express  
2 your grave concerns.

3 MR. McFARLAND: Thank you, Your Honor. The Court  
4 said a few minutes ago that perhaps the jurisdictional issue  
5 or that the jurisdictional issue didn't seem to be directly  
6 implicated right now. I think with what I just heard NOAA  
7 saying that they have issued at least a preliminary approval  
8 under Section 113 for activities that absolutely affect my  
9 client's salvage rights, and, from a broader perspective,  
10 this Court's jurisdiction.

11 The 2004 expedition where that tray was left was  
12 our expedition as salvor-in-possession, and Ms. Johnston and  
13 Dr. Cullimore were there as part of the R.M.S. team by  
14 permission. The tray was placed by us, essentially. The  
15 right to remove it does not, at least at this point in time,  
16 belong to NOAA. The idea and the collection of rusticles  
17 also is something that this Court granted permission to  
18 R.M.S.T. to do as salvor-in-possession.

19 The activities that NOAA is saying here, that they  
20 preliminarily approved, are activities that we weren't even  
21 consulted about. When EYOS's president wrote this Court in  
22 August and provided a letter, the letter talked about six  
23 dives for viewing. It did not talk about gathering  
24 rusticles. It certainly did not talk about picking up the  
25 tray. It talked about nothing that would be invasive in any



1 sense at all. We expected that we would be given a fuller  
2 opportunity to comment.

3           The first we heard about this, about just the idea  
4 that they wanted to pick up rusticles and that they wanted  
5 to pick up the sample tray and replace it with a new tray,  
6 was in the September 11th report from the government. We  
7 weren't consulted beforehand. We haven't been consulted  
8 since. The letter that Mr. Porter handed as Exhibit 1, the  
9 first time I have seen this is literally five minutes ago  
10 when he gave it to me.

11           My client, at a minimum, putting aside for a second  
12 the legal and constitutional issues, my client as  
13 salvor-in-possession should have been consulted. We have  
14 been in communications with NOAA about all sorts of things,  
15 including due diligence for the bankruptcy that I thought  
16 that we are going to get to in a little bit. But the idea  
17 that NOAA thinks that they can issue an approval for this  
18 operation, I think, impacts this Court's jurisdiction, and  
19 it certainly impacts my client's rights as  
20 salvor-in-possession.

21           I would ask this Court, to the extent that it's  
22 necessary, to enjoin any type of EYOS expedition until we  
23 get a whole lot further clarification and set idea of what  
24 they are going to do and we are sure that it doesn't impinge  
25 our salvage rights.

1           We have no notice of this, Your Honor. I think it  
2 absolutely impinges our salvage rights. We are in no way  
3 saying -- this Court knows, we have always promoted science  
4 and education from the wreck site. But we are the  
5 salvor-in-possession, and we have rights, as this Court has  
6 long recognized. This Court is the one who ought to be  
7 determining who can and who can't go down there and do  
8 things.

9           Mr. Porter has said that the government's interest  
10 under Section 113 were aligned with the Court's. The  
11 educational and scientific interest may be aligned, but I  
12 don't think the jurisdictional interests are at all aligned,  
13 and I think that's something that needs to be reviewed and  
14 briefed with the Court.

15           But to come in here today for this status hearing  
16 and to say we are issuing preliminary approval and we want  
17 this expedition to go forth later this month without having  
18 consulted my client, without having given this Court a full  
19 opportunity, this should have been brought up to the Court  
20 in August.

21           They just didn't come up with this idea last week  
22 that they were going to do these things. But the letter of  
23 August 23 to this Court, I don't think, mentions those two  
24 activities. It talks about simply viewings.

25           THE COURT: I agree. The letter that the Court had

1 at the last hearing talked about viewings, and I think we  
2 briefly discussed that. I can't give it to you word for  
3 word, but I know that we discussed that it was viewing and  
4 that there would be submersibles which were going down.

5 I have not had an opportunity to fully review  
6 Exhibit 1 that we just saw, the September 17th letter. I  
7 understand your concern about the trays, the retrieval, the  
8 research, and the rusticles, but, perhaps, we can determine  
9 a way to address it at the end of the hearing.

10 MR. McFARLAND: We would be happy to, Your Honor,  
11 and, perhaps, the Court would like us to provide some  
12 briefing on this, at least provide our opinion in writing.  
13 I don't fault Mr. Porter, but I've got some issue when this  
14 is sprung on us at this hearing for the first time.

15 THE COURT: I'll let you respond in a minute,  
16 Mr. Porter. I'm not going to make any determinations yet.  
17 I have some suggestions and some ideas about how we can  
18 proceed on those issues, and I will let you both address  
19 them at the appropriate time.

20 So why don't you go ahead with your bankruptcy  
21 report.

22 MR. McFARLAND: Thank you, Your Honor. Your Honor,  
23 we were here last on August 21st, and a great deal has  
24 happened in the bankruptcy proceedings and in this Court  
25 since then. So let me update the Court and give a synopsis,

1 and then I'm happy to address any questions the Court would  
2 have.

3 In terms of, the Court noted that there have been a  
4 number of periodic and status reports that have been filed  
5 since that August 21st hearing, and then the bankruptcy  
6 court held its hearing on August 30th. That was an  
7 evidentiary hearing at which it addressed the equity  
8 committee's dissolution proposal, the unsecured creditors  
9 committee's dissolution proposal, and the debtor's motion  
10 for order approving competitive bidding and sale.

11 At that hearing there were some significant  
12 developments, Your Honor. First off, the Stalking Horse  
13 Purchaser, PAH, increased its offer to \$19 and a half  
14 million, and increased the breakup fee from 1 million to \$1  
15 and a half million.

16 At the same hearing, the largest unsecured  
17 creditor, 417 5th Avenue Real Estate, LLC, indicated that it  
18 would not support either of the other plans of the equity  
19 committee or the unsecured creditors.

20 After that the equity committee withdrew its plan,  
21 and on September 6th, the museum and the unsecured creditors  
22 committee asked that their plan be held in abeyance. Then  
23 the Court issued its order on September 11th, bankruptcy  
24 court issued its order on September 11th, which approved,  
25 and the majority barred the competitive bidding procedures

1 under the APA, did not approve the equity committee's  
2 disclosure plan, and held in abeyance, at its request, the  
3 UCC and NMM's plan, and it scheduled a sale hearing, Your  
4 Honor, for October 18th of 2018 to approve a purchase of the  
5 premier assets and the stock of R.M.S.T.

6 The bankruptcy court issued a supplemental order on  
7 September 13th which further set forth the schedule and  
8 procedures, and we now have a timeline, Your Honor, which by  
9 October 5th, bidders must be qualified. In other words,  
10 anyone who wants to now bid, in addition to the Stalking  
11 Horse Purchaser, has to submit their credentials,  
12 qualifications, and they will be approved or not approved by  
13 October 5th.

14 If there is to be an auction, in other words, if  
15 someone else qualifies, that will be held on October 11th,  
16 and then the bankruptcy court has scheduled its hearing for  
17 approval of the sale on October 18th. Critically, the  
18 Stalking Horse Purchaser has the right, as Your Honor knows,  
19 it wants this Court to approve the sale.

20 So it has stated that that approval needs to be  
21 done, they would like it to be done by October 31st of 2018.  
22 That's a date, Your Honor, that is driven by my client's and  
23 the debtor's financial position, which, as we provided the  
24 transcript to the Court from the hearing on August 30th, the  
25 financial position of the company is, by their own

1 admission, dire. There is not enough financial resources to  
2 go past the first of the year, most likely, and right now,  
3 the largest reason the company is proceeding is because  
4 professional fees are not being paid.

5 So timing is everything, Your Honor, and we  
6 recognize that we come to this Court, and we are asking for  
7 a somewhat expedited process in the sense of having a sale  
8 approved by the bankruptcy court on October 18th, and then,  
9 with the Court's permission and given the Court's schedule,  
10 having a hearing before Your Honor for the admiralty, what  
11 is called in the bankruptcy proceedings, the admiralty court  
12 order approving the sale by October 31st.

13 THE COURT: What if the sale doesn't go through on  
14 October 18th?

15 MR. McFARLAND: If the sale doesn't go through on  
16 the 18th, if the Stalking Horse Purchaser should somehow not  
17 be approved, then we would not be coming to Your Honor,  
18 obviously, and I think that would mean that things are in a  
19 much different situation.

20 THE COURT: I understand. I will arrange for a  
21 hearing between the 18th and the 31st. That's something  
22 that I will do, and I can certainly fit that into my  
23 schedule.

24 MR. McFARLAND: We appreciate that, Your Honor.

25 THE COURT: Where does the museum stand in all of

1 this?

2 MR. McFARLAND: I don't think the museum has any  
3 standing anymore, Your Honor. It was part of the unsecured  
4 creditors committee's plan, although I note that the  
5 unsecured creditors committee did not officially move to  
6 intervene in this action. But the museum was part of the  
7 unsecured creditors committee's plan. That plan, by their  
8 own request, is held in abeyance, meaning that plan is not  
9 something for the Court to consider at this point in time.

10 Should the museum want to submit a bid and do the  
11 qualifications for a bid so that it could participate in the  
12 auction on October 11th, that would be a different story.  
13 But so far they haven't shown any inclination for that, and  
14 I think they would have to admit, both publicly and  
15 privately, that they can't be part of a bid process. They  
16 don't have the financial commitment to do it, and that's not  
17 how they are going to participate.

18 But if they change their mind, and they want to  
19 qualify as a bidder and go forth in an auction, and they  
20 were to be the successful bidder, and assuming they were  
21 approved by the bankruptcy court, then we would be before  
22 this Court between October 18th and October 31st and  
23 presenting that to the Court.

24 I think it highly, highly unlikely, and at this  
25 point in time I don't see a standing for the museum, at

1 least in these proceedings. In that sense, and I don't want  
2 to jump if the Court would prefer me to wait, but the equity  
3 committee has withdrawn their motion to intervene in this  
4 proceeding, and the museum has asked that their motion  
5 essentially be held in abeyance. I don't know why it would  
6 be held in abeyance. I think it should be dismissed without  
7 prejudice, and then if something changes and they want to  
8 come back in the proceedings, so be it.

9 But at this point in time in this court they have  
10 no injury, they have no standing. I also want to say this,  
11 though, Your Honor, to show the Court how seriously we take  
12 this in what we are doing, we received from the government  
13 and NOAA their, essentially, what it would be, I think fair  
14 to call it, due diligence listing of information they would  
15 like. We have reviewed it and begun discussions with NOAA  
16 and will respond to them fully, and we are doing everything  
17 we can, Your Honor. I think much of the information that  
18 NOAA's requested is information that this Court would want  
19 itself, and we would provide to the Court.

20 But I say all this because I think the Court  
21 appreciates, but I want to emphasize how serious this is to  
22 the debtors. We are in a difficult, difficult financial  
23 situation with approximately 120 employees waiting to see  
24 what will happen here. So, financially, company-wise,  
25 morale-wise, if there is going to be a sale approval and an



1 admiralty court approval, it's not just that sooner is  
2 better than later, Your Honor, it's that sooner is required  
3 so that there is a viable company for the purchaser to  
4 proceed with.

5 THE COURT: Where are R.M.S.T. and the Stalking  
6 Horse Purchaser in their discussions with NOAA on their  
7 position? Have you completed those? Are you still in  
8 discussion on the transaction?

9 MR. McFARLAND: There have been back-and-forth  
10 communications on the transaction in terms of the documents  
11 themselves. As I say, we got the due diligence list last  
12 week, I believe. It could be off, the 10th or 11th. We  
13 have already, both internally and in communications with  
14 NOAA, said, let's talk about this further and work on it,  
15 and we will do what we can to satisfy them consistent with  
16 our rights and obligations.

17 THE COURT: All right. Because the Court is  
18 certainly going to listen to NOAA when it comes to any final  
19 approval by this Court. So I would pay close attention to  
20 what is required through due diligence here.

21 MR. McFARLAND: We are, Your Honor. We appreciate  
22 that. We recognize NOAA's role in that sense under the  
23 covenants and conditions. The first thing that I got up to  
24 speak about, I think, is a different role, Your Honor. I  
25 don't want to beat it but so much.

1           THE COURT: We are going to come back to that. I  
2 just wanted to be sure, because, obviously, on the  
3 rescheduled hearing, the Court is going to listen to what  
4 NOAA has to say before giving any approval of this Court for  
5 the sale, if that's the juncture that we land at.

6           MR. McFARLAND: We understand, Your Honor. That's  
7 why we are working with them. Once we got that letter, we  
8 immediately started on the due diligence aspects. This is a  
9 transaction that, with all due speed, is putting it mildly  
10 if we can.

11          THE COURT: Thank you.

12          MR. McFARLAND: Thank you, Your Honor.

13          THE COURT: Before we move on or move back to,  
14 basically, the rusticles, the trays, and the EYOS activity  
15 that is upcoming, Mr. Powers is here, so let me hear from  
16 him just in terms of where the museum stands, I'll just call  
17 them the museum defendants, museum party, proposed  
18 intervener.

19          MR. POWERS: Yes, Your Honor. With one point of  
20 clarification, I don't think it's accurate necessarily, as  
21 Mr. McFarland described the situation, as one where we don't  
22 have the means. I think the big hang-up under the terms is  
23 that we have to provide a non-refundable deposit, and that's  
24 something that the museum is not prepared to do any more  
25 than the Smithsonian Institution would be ready to do

1 something like that, Your Honor.

2 It's always been our position that we want to be  
3 ready to jump in in the event that the stalking horse sale,  
4 for any number of reasons, may not go through. It may very  
5 well be that this Court takes it under consideration when  
6 they eventually come here, and there may be concerns that  
7 this Court has.

8 But what we have always tried to do is be in a  
9 position so that if it does not go through, we are ready to  
10 respond immediately, Your Honor. Your Honor, when we were  
11 last here on August 21st, you were gracious enough to allow  
12 Mr. Quartaro to speak before the Court. With the Court's  
13 permission, I'd ask that he be allowed to speak right now.

14 THE COURT: Let me ask you two things: In other  
15 words, you are asking this Court to hold your motion to  
16 intervene in abeyance?

17 MR. POWERS: Yes, Your Honor. I believe, and I  
18 certainly don't speak for the government, but I think the  
19 government's position is they really don't have a position  
20 on that.

21 THE COURT: I am going to hold it in abeyance. I'm  
22 not going to put you to the expense of refiling all of this.  
23 That's just an inappropriate use of judicial and legal  
24 resources. So everybody has filed their papers with the  
25 Court, and I look at the NMM, the National Maritime Museum,

1 as a potential intervenor. You have a fully briefed motion  
2 to intervene filed before the Court, and, if appropriate,  
3 the Court will grant intervention or not. I haven't reached  
4 that point. I will hold it in abeyance pending the sale  
5 proceedings, and certainly you should be here at whatever  
6 proceedings the Court has between, I believe it is October  
7 18th and October 31st.

8 MR. POWERS: Thank you, Your Honor.

9 THE COURT: Because that will be when this Court is  
10 making decisions as to whether it is going to accept the  
11 Asset Purchase Agreement and the final sale, and I haven't  
12 heard from NOAA on that, and I understand your position; you  
13 can't put up a non-refundable deposit, as any museum would  
14 not be able to, but that you are still ready, willing, and  
15 able to participate in the purchase.

16 MR. POWERS: Absolutely, Your Honor.

17 THE COURT: All right. Who do you want to speak?

18 MR. POWERS: Mr. Quartaro, you were kind enough to  
19 allow him to address the Court.

20 THE COURT: Very briefly, yes.

21 MR. POWERS: Very briefly, Your Honor. Thank you.

22 MR. QUARTARO: Well, thank you again, Your Honor,  
23 for that indulgence and for allowing us to address the Court  
24 while our motion is going to be held in abeyance, and we  
25 thank you for that as well.

1 I did just want to clarify a couple of things.  
2 During the bankruptcy hearing, obviously, there was a deal  
3 made prior to that hearing. This wasn't something that  
4 appeared to have emerged during the course of the  
5 proceedings before Judge Glenn, but was, rather, something,  
6 of course, that was agreed prior to that and to merge during  
7 the hearing. So, of course, that didn't put the museum in a  
8 position that it could readily respond to that.

9 Also, the National Maritime Museum has not proposed  
10 the dissolution plan. They have proposed the plan of  
11 reorganization that would allow them to acquire what the  
12 Court has called the STAC or the Titanic collection, and it  
13 may well be that that winds up proceeding under a variety of  
14 circumstances, which may well include either NOAA's finding  
15 that the proposed transaction does not pass muster or this  
16 Court's finding in that direction.

17 For that reason, we asked the bankruptcy court to  
18 hold our plan off to the side while this process runs  
19 because, as Mr. Power has identified, we are a public  
20 institution. We simply can't put a million, a million five,  
21 into a non-refundable deposit in a bankruptcy auction. So  
22 while I appreciate R.M.S.T.'s optimism that, perhaps, that  
23 structure will change and that the National Maritime Museum  
24 will somehow then be able to participate in this auction,  
25 structurally that's unlikely.

1           We would be interested, as well, and we are happy,  
2   of course, to talk to Mr. Porter and his colleagues about  
3   it. I think we would be very interested in seeing this due  
4   diligence list. I think, as we probably made clear and as  
5   the Court has probably surmised, our view is that a transfer  
6   of this collection to any other entity is a transfer that  
7   probably ought to merit a full review. Is that new entity a  
8   qualified institution?

9           Now, NOAA and R.M.S.T., of course, are going to go  
10   back and forth on whether or not the stock sale or the  
11   proposed stock sale to the Stalking Horse Purchaser fits  
12   within one category of the covenants and conditions or,  
13   perhaps, another, but that's our overwhelming concern.

14           What we want to stay in here for and want to stay  
15   before the bankruptcy court for, is we want to be there to  
16   try and acquire this collection, if for some reason this  
17   piece does not go forward. Moreover, we want to acquire the  
18   entire collection to keep it together, which we think really  
19   is the overwhelming purpose, not just of the Court's  
20   position, of NOAA's involvement, and of the covenants and  
21   conditions.

22           So we thank the Court very much for what sounds  
23   like the granting of our request to hold our intervention in  
24   abeyance.

25           THE COURT: That's part of what I indicated, and

1 I'm not going to dismiss it without prejudice. I'm going to  
2 hold it in abeyance pending further proceedings of the  
3 court.

4 MR. QUARTARO: Well, thank you, Your Honor. We are  
5 concerned, as Mr. McFarland has identified and his  
6 bankruptcy counsel has identified in Florida, that the  
7 company's financial prospects are dwindling and dwindling  
8 quickly. So if there is any sort of issue with this  
9 proposed transfer, we will all have to move quickly, Your  
10 Honor. Having those papers already before the Court, I  
11 think, will facilitate that. So unless the Court has  
12 questions for me, I think those are really the update points  
13 that I wanted to make.

14 THE COURT: Thank you, Mr. Quartaro.

15 MR. QUARTARO: Thank you, Your Honor.

16 THE COURT: Then I think where we are now is you've  
17 given the Court the full picture of the bankruptcy  
18 proceedings and the status thereof. At the conclusion of  
19 the hearing, I'll ask you to meet with the calendar clerk,  
20 Ms. Cherry, and set a hearing contingent upon there being an  
21 approved sale by the bankruptcy court on October 18th, and,  
22 obviously, at the next hearing I will want to hear in detail  
23 from NOAA, and if appropriate, from the potential  
24 intervenors, and obviously from R.M.S.T. and everyone's  
25 position in regard to where the bankruptcy proceedings are

1 at that point in time, which could be quite different than  
2 they are today. Today is September 18th, and that's a month  
3 from today, where everything could be in a completely  
4 different posture.

5 For right now, I believe there are only two  
6 remaining issues for today, unless there is something else  
7 you want to bring to the Court's attention.

8 MR. PORTER: Your Honor, let me just, if I may,  
9 there was discussions of the due diligence. I'd like to go  
10 ahead and tender a copy of that letter to the Court, if I  
11 may, as an exhibit, since there has been some discussion of  
12 that.

13 THE COURT: That will be your Amicus United States  
14 Exhibit No. 3.

15 (The document was received in evidence as Amicus  
16 U.S. Exhibit Nos. 3.)

17 MR. PORTER: Just one thing I want to make very  
18 clear on this. While we are engaging in this discussion  
19 with R.M.S.T., the Court should be aware we are not  
20 prejudging anything in this matter, even if the museum  
21 comes. Obviously, from NOAA's perspective, as we have said  
22 in prior pleadings, the museum presents a very attractive,  
23 laudable proposal that's in the public interest, but it  
24 needs to be before the Court as something for us to review.  
25 If it does come before the Court, we will be happy to



1 exercise the same kind of diligence we are on this one. We  
2 are just trying to get ahead of this as much as we possibly  
3 can.

4 THE COURT: I understand. In other words, we first  
5 have to see what happens on October 18th, and then we will  
6 have to move from there to see what NOAA's position is, what  
7 the Court's position is. Then after that, whatever the next  
8 step may be.

9 MR. PORTER: That's correct.

10 THE COURT: I believe the two issues are this issue  
11 of the trays and the rusticles.

12 MR. PORTER: Right.

13 THE COURT: As I read your report, I think  
14 expedition by EYOS is scheduled sometime toward the end of  
15 this month into October?

16 MR. PORTER: I believe the 29th of September, Your  
17 Honor, is when that expedition is scheduled, and it's  
18 scheduled to last about seven to ten days, I believe. One  
19 thing I would like to clarify, we brought up the EYOS  
20 expedition as early as July in status reports. So this is  
21 not a surprise to R.M.S.T.

22 The last time, I believe it was the last time or  
23 maybe two times ago at a hearing, we concluded the hearing  
24 with the Court directing R.M.S.T. to contact EYOS to provide  
25 the letter to the Court.

1           In fact, Ms. Rolleri contacted EYOS several days  
2 after that and encouraged them to file the letter. They  
3 have had every opportunity to talk to EYOS about what EYOS  
4 wanted to do in these expeditions for at least two months.  
5 So the idea that this is an absolute surprise, certainly as  
6 to the rusticles and trays, the reason that was not in our  
7 August status report is because this wasn't raised with us  
8 until the first part of September.

9           THE COURT: Well, it's the first time the Court has  
10 heard about it.

11           MR. PORTER: I agree.

12           THE COURT: So everyone has known about the EYOS  
13 expedition, but the details of it, such as getting the  
14 rusticle samples, retrieving a tray, and putting another  
15 tray down, were not before the Court.

16           MR. PORTER: That is absolutely true. That is  
17 information we first learned that they wanted to do in early  
18 September. It is also, just to be clear, that the  
19 authorization that is before the Court does not include any  
20 of that. It does not include picking up the old tray or  
21 putting down a new tray or removing rusticles.

22           It includes only the very initial letter that they  
23 asked, which is to go and do standard definition  
24 photographs. Quite frankly, with respect to the allegation  
25 that that interferes with salvage rights, I believe there is

1 an opinion by the Fourth Circuit that the Court can't  
2 prevent visits to the wreck site that don't interfere with  
3 salvage.

4 THE COURT: I understand that. The Court has  
5 allowed that. Visits to the wreck site, photographs of the  
6 wreck site.

7 MR. PORTER: Correct.

8 THE COURT: That is entirely different from a  
9 salvage operation. When you remove the rusticles, that is  
10 salvage, in the Court's opinion. I understand the  
11 scientific value of it. So not that I view it as a totally  
12 negative activity, which I don't, actually, it still does  
13 involve salvage.

14 I understand that any entity that's prepared and  
15 can afford to and make the arrangements to go down there,  
16 can certainly take pictures of the wreck site and look at  
17 it. It's when you start taking parts of it, it's when you  
18 start engaging in salvage operations, it's a different  
19 matter.

20 MR. PORTER: I don't disagree with Your Honor, and  
21 that's why we wanted to bring it to your attention and why  
22 the authorization does not encompass any of those things.

23 THE COURT: All right. I'm going to get my  
24 calendar so that I can assist with the scheduling of a  
25 couple of things. This gives you not quite 10 days. I'm

1 going to direct that R.M.S.T. and NOAA endeavor to prepare  
2 an order that you can both agree to in terms of the trays  
3 and in terms of the rusticles.

4 In other words, R.M.S.T.'s salvage rights are  
5 intact if they, as salvor-in-possession, agree to allow this  
6 to go forward and the Court enters an order allowing it to  
7 go forward without there being a permit.

8 So I would view the best solution to this  
9 situation, without getting into constitutional issues, is to  
10 have an agreed order which the Court can issue, or if NOAA  
11 doesn't agree to it, then for R.M.S.T. to present it to the  
12 Court. I don't see any potential damage to the wreck site  
13 or any salvage operation that is going to have a major  
14 interference with R.M.S.T.'s salvage rights, other than in  
15 principle.

16 In other words, you allow a little bit of an  
17 exception, and that leads to a bigger exception. That's the  
18 only danger that I see at this juncture. I understand that  
19 you're vigorously defending your salvage rights and an order  
20 would give you the jurisdiction of this Court to enforce  
21 those salvage rights.

22 However, this is not approving a major salvage  
23 operation by a competing entity. It would be an approval of  
24 allowing for scientific research, the removal of a tray  
25 that's been down there, that you participated in, to come

1 back up and to place a new tray down, with the understanding  
2 that you would have access to any of the research  
3 conclusions. You have allowed the tray to go down, it's now  
4 being picked up, it's now going to be analyzed, and you're  
5 going to let them agree to another tray to go down.

6 I would see that as beneficial to the study of  
7 bio-deterioration rates. That would be beneficial not only  
8 to the Titanic salvage operation but to the scientific  
9 world, in general, when it comes to these bio-deterioration  
10 rates. So I see it as a positive thing that you would be  
11 agreeing to, not a detrimental activity to your salvage  
12 operations.

13 Then, secondly, rusticles have been allowed before  
14 to be taken, in the amount that they want, which I do not  
15 view as a major amount of rusticles from this vessel, you  
16 would agree to that, and, likewise, to be privy to any  
17 research or conclusions that are drawn from the taking of  
18 those rusticles. If it needs to be under seal, you could  
19 come to the Court to have the results of that put under  
20 seal.

21 It would seem to me that the best solution at this  
22 juncture is to come up with an agreed order so everybody's  
23 in agreement, and we are not at issue at this point over who  
24 has jurisdiction. The Court enters it, and there is no  
25 question that it can go forward at this juncture, and the

1 other is the photographs that have always been allowed.

2 If for some reason you cannot agree and get an  
3 order before the Court, then R.M.S.T. can present its own  
4 order. Whether I decide to enter or not enter it, we will  
5 set a tentative hearing for Friday, the 28th of September  
6 here. We will set a hearing on Friday, the 28th, but I'm  
7 hoping that you can get an agreed order.

8 It seems to me with everything else you've got  
9 going on that an order makes more sense for both sides,  
10 because NOAA's got a lot to do to review this sale and the  
11 sale agreement, and R.M.S.T. has a lot to do to get this  
12 sale through and to protect its employees. It would seem to  
13 me that this is not something that you want to spend a lot  
14 of time on at this point, if a proper order can be entered  
15 by the Court.

16 The other thing I would say, I have not reviewed  
17 your letter that you've presented, and if the Court has any  
18 objection to it, I will write and let you know and let  
19 everyone know, and likewise, if R.M.S.T. has any objection  
20 to it. In other words, this is the letter of September  
21 17th, 2018 -- that's the date stamp on it -- to Mr. McCallum  
22 and Dr. Gallaudet, the Assistant Secretary of Commerce for  
23 NOAA.

24 So I will review this. I've admitted it as an  
25 exhibit. If the Court has any objections, I will let you

1 know on or before the 27th. If you don't hear anything from  
2 me, it means that I'm in agreement with the letter. I will  
3 only write you if I'm in disagreement, and I would do that  
4 on or before September 27th.

5 Also, on or before September 27th, I would expect  
6 you to present an agreed order, and if not, then for  
7 R.M.S.T. to present an appropriate order. If I can't agree  
8 to enter the order, then we will have this back-up hearing  
9 set.

10 MR. PORTER: Your Honor, just to clarify one thing  
11 on the tray. I don't know that it matters for today's  
12 purposes, but it was not R.M.S.T.'s tray, it belonged to the  
13 researchers that were participating. NOAA was participating  
14 in that, as well.

15 THE COURT: I understand, but it was part of their  
16 expedition.

17 MR. PORTER: That's correct.

18 THE COURT: They agreed to let it go down.

19 MR. PORTER: That's correct.

20 THE COURT: It never came to the Court. I don't  
21 recall anybody asking me about a tray, but there's been a  
22 lot that's gone on in this case. I know about the  
23 rusticles, but I don't remember anyone asking me about  
24 placing a tray. So I just assumed it was something you all  
25 were able to agree to at the time, and I would think you

1 could agree to it now.

2 On September 28th we can set a hearing tentatively,  
3 it will have to be at 1:00 because I have matters that  
4 morning. I have an 11:00 matter that could take a little  
5 bit of time, so we will set the continued hearing on the  
6 rusticles, the trays and the letter for September 28th at  
7 1:00, if necessary.

8 It looks like the Court has free time on October  
9 25th and October 26th, and I'll let Ms. Cherry set that  
10 hearing date and time with you following the conclusion of  
11 this hearing, and that will give you sufficient time to  
12 review and take care of whatever negotiations everyone needs  
13 to get in place.

14 Mr. Porter, is there anything further for the Court  
15 to take up today?

16 MR. PORTER: Nothing further from us, Your Honor.  
17 Thank you.

18 THE COURT: I also note that Ms. Rolleri is here  
19 for NOAA, and that Mr. Troy is here for the Department of  
20 Justice.

21 Mr. McFarland, is there anything further that you  
22 would like taken up today?

23 MR. McFARLAND: No, Your Honor. Thank you. We  
24 appreciate the Court's willingness to schedule a hearing  
25 before the 31st.



1 THE COURT: All right. Then the Court stands in  
2 recess until tomorrow.

3 (Hearing adjourned at 2:03 p.m.)

4 CERTIFICATION

5  
6 I certify that the foregoing is a correct transcript  
7 from the record of proceedings in the above-entitled matter.  
8

9  
10 X \_\_\_\_\_/s/ \_\_\_\_\_ x

11 Jody A. Stewart

12 X \_\_\_\_\_9-19-2018 \_\_\_\_\_ x

13 Date  
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JODY A. STEWART, Official Court Reporter